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NO. 283

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

A MOTION THAT THE COURT DELAY CONSIDERATION OF THE PETITION UNTIL A FINAL DECISION IS RENDERED UPON PETITIONER'S NEW APPEAL TO THE COURTS IN OHIO

DONALD F. KNOX
Petitioner

vs.

THE STATE OF OHIO
Respondent

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Petitioner

MOTION

The petitioner respectfully requests that the Court delay the consideration of the Petition for Writ of Certiorari in this case until a final decision is rendered upon petitioner's second appeal to the courts of Ohio in general and to the Court of Appeals of Franklin County, Ohio in the immediate instance.

MEMORANDUM IN SUPPORT OF THE MOTION

The basis for this second appeal to the courts of Ohio is that the petitioner was denied the right to have presented before the Supreme Court of Ohio, upon submission of his Motion to Certify, all of the instances of denial of federal constitutional rights. Such a denial resulted from the failure of his former attorney to act in accordance with several specific statements by the petitioner that he planned to appeal to the Supreme Court of the United States if necessary. All but one of those instances of denial of federal constitutional rights was mentioned in the Petition, but only the matter of the contrary decisions out of the Court of Appeals was brought before the Supreme Court of Ohio. This latter fact lessens the effectiveness of the Petition to the detriment of the cause of the petitioner.

The petitioner contends that, since the former attorney was highly experienced and knowledgeable and since he was informed several times of petitioner's objective, the failure to present those matters to the Supreme Court of Ohio represented a deliberate act whereby he substituted his judgment for that of the petitioner regarding the future of the case.

The petitioner contends that he has a right based

upon general principles of justice to appeal for a second time to the courts of Ohio in order to correct this failure on the part of his former attorney, which was a matter entirely beyond the control of the petitioner. The failure was not a matter of oversight or inexperience on the attorney's part but, as stated above, a matter of his making a decision which was not his to make.

In conjunction with this second appeal to the Court of Appeals of Franklin County, Ohio, the petitioner submitted to that court several items in support of said appeal, and those items are submitted herewith as Appendixes A, B and C.

There was one instance of a denial of a federal constitutional right that was not submitted in the Petition because the matter had not become part of the record. That instance pertained to the State Personnel Board of Review prior to that Board's decision in appellant's case and is described in Appendix B. The matter is now part of the record of the case since Appendix B was submitted to the Court of Appeals under another cover.

In addition to the subject cited just above, Appendix B provides a description of the various instances of denial of federal constitutional rights as the matter stood at the time of the oral hearing before the Supreme Court of Ohio on the Motion to Certify to that court and immediately prior to the rendering of the contrary decision out of the Court of Appeals on which the petitioner based his Motion for Rehearing to the Supreme Court of Ohio.

Furthermore, the Appendix B describes certain unusual actions by the State Personnel Board of Review and the Assistant Attorney General.

Appendix A accompanying this motion was also submitted to the Court of Appeals of Franklin County, Ohio under another cover in support of the second appeal to that court; it presented the bases upon which said appeal was brought to that court. In addition, it presents the numbers of the pages whereon a description is provided of the various points mentioned above.

Appendix C accompanying this motion is an affidavit which was presented to the Court of Appeals of Franklin County, Ohio in conjunction with the second appeal to that court and supplies the sworn statements supporting the points made in Appendix B.

The petitioner submits the enclosed appendixes for the purpose of informing this Court of the basis for the second appeal to the courts in Ohio.

The petitioner requests that a delay in the review of the Petition in this case be granted while awaiting the conclusion of this second appeal to the courts of Ohio and that the materials submitted thus far to this Court be utilized upon the ultimate review of the Petition. The time and expense incurred by the petitioner in preparing said materials has been very considerable in proportion to the petitioner's resources.

Respectfully submitted,

Donald F. Knox
Petitioner